

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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J.T. SHANNON LUMBER, CO., INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 07-2847-JPM/tmp
	)	
RICHARD BARRETT,	)	
	)	
Defendants.	)	

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**JURY INSTRUCTIONS – PUNITIVE DAMAGES PHASE**

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Ladies and gentlemen of the jury, we have now come to the second phase of the case when it is my duty to instruct you in the law as it applies to punitive damages. Again, you must follow the law as I state it to you.

In the first phase of this trial, you found Richard Barrett liable to Shannon Lumber Co., Inc., for misappropriation of trade secrets, breach of contract, breach of common law fiduciary duty, tortious interference with contract, and unfair competition.

You, the jury, also agreed that Shannon Lumber Co. had shown by clear and convincing evidence that the defendant's actions as to these claims were intentional, reckless,

malicious, or fraudulent as evidenced by your answer of "Yes" to Verdict Question Nos. 17, 18, 19, 20 and 21.

As we discussed earlier, as jurors it is your exclusive duty to decide all questions of fact submitted to you and for that purpose to determine the effect and value of the evidence.

You must not be influenced by sympathy, bias, prejudice or passion.

You are not to single out any particular part of the instructions and ignore the rest, but you are to consider all the instructions as a whole and regard each in the light of all the others.

These instructions are in addition to the instructions you have already received.

Purposes of Punitive Damages

Punitive damages and compensatory damages serve different purposes. Compensatory damages are intended to compensate the plaintiff for the actual injury or loss the plaintiff suffered as a result of the defendant's misconduct. As I previously instructed you, you should presume that the plaintiff has been made whole for its injuries by the compensatory damages you have awarded. In contrast, punitive damages are intended to punish misconduct and to deter similar misconduct in the future.

Punitive Damages  
(T.P.I. 3 - Civil 14.56)

You have decided that Shannon Lumber Co. is entitled to punitive damages. You must now decide the amount of those damages. Shannon Lumber Co. has the burden of proving by a preponderance of the evidence the amount of punitive damages that you should award. Remember that the preponderance of the evidence means that amount of factual information presented to you in this trial which is sufficient to cause you to believe that an allegation is probably true. In order to preponderate, the evidence must have the greater convincing effect in the formation of your belief. If the evidence on a particular issue appears to be equally balanced, the party having the burden of proving that issue must fail.

In making your decision, you must consider the instructions I have already given you and also the following as to the defendant you are considering:

1. The defendant's net worth and financial condition;
2. The objectionable nature of the defendant's wrongdoing, the impact of his conduct on Shannon Lumber Co., and the relationship of the parties;
3. The defendant's awareness of the amount of harm being caused and his motivation in causing the harm;
4. The duration of the defendant's misconduct and whether the defendant attempted to conceal the conduct;
5. The amount of money Shannon Lumber Co. has spent in its attempt to recover the losses;
6. Whether the defendant profited from the activity, and if so, whether the punitive award should be in excess of the profit in order to deter similar future behavior;
7. The number and amount of previous punitive damage awards against the defendant based upon the same wrongful act;
8. Whether, once the misconduct became known to the defendant, the defendant tried to remedy the situation or offered a prompt and fair settlement for the actual harm caused; and
9. Any other circumstances shown by the evidence that bears on determining the proper amount of the punitive award.

You have already awarded Shannon Lumber Co. compensatory damages for the purpose of making Shannon Lumber Co. whole. The purpose of an award for punitive damages is to punish the wrongdoer and to deter misconduct by the defendants or others.